

REVISION OF TRADING WITH THE ENEMY ACT

MARKUP
BEFORE THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
FIRST SESSION

JUNE 16, 17, AND 20, 1977

Printed for the use of the Committee on International Relations



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1977

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REVISION OF TRADING WITH THE ENEMY ACT

THURSDAY, JUNE 16, 1977

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The committee met in open markup session at 10:48 a.m. in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki (chairman of the committee) presiding.

Chairman ZABLOCKI. The committee will please come to order.

We are meeting today to consider H.R. 7738, a bill to revise the Trading With the Enemy Act. The National Emergencies Act passed by Congress in 1976 terminates all national emergencies as of September 14, 1978, except for eight laws. The committees with jurisdiction over those laws were directed to study and report to the House and Senate within 275 days any recommendations and proposed revisions. One of those laws, the Trading With the Enemy Act, is in the jurisdiction of the Committee on International Relations. The Subcommittee on Economic Policy has held hearings on the Trading With the Enemy Act and has reported to the full committee its recommendations in the form of H.R. 7738.

The bill and a section-by-section was sent to the members on Tuesday, and I am sure all members have had ample opportunity to review recommendations and the section-by-section of the bill.

We will begin the meeting with a statement from Congressman Bingham, chairman of the subcommittee, explaining the subcommittee's action and the bill. The ranking minority member of the committee, Mr. Whalen, may also wish to make a brief statement. We will then hear the administration's position on the bill from Hon. C. Fred Bergsten, Assistant Secretary of the Treasury. Mr. Bergsten's testimony will be followed by a question and answer period. We will then commence markup, if there is sufficient time remaining in this morning's session, and, if necessary, continue markup at 10 a.m. tomorrow morning.

Mr. Bingham, would you begin, please.

STATEMENT OF HON. JONATHAN B. BINGHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BINGHAM. Thank you, Mr. Chairman.

Mr. Chairman, the members have on their desks a rather comprehensive statement prepared for me by the subcommittee staff which goes into the background of the Trading With the Enemy Act in some detail. It is a comprehensive statement. It indicates what we have proposed and reasons for it. Members also have in front of them a volume which was compiled last year by my subcommittee staff

dealing with this same subject. And just leafing through the volume, the members will get an idea of the enormous extent of the background of this act.

What I would like to do is to ask that my statement be incorporated in full following my oral summary.

Chairman ZABLOCKI. Without objection, so ordered.

HISTORY OF TRADING WITH THE ENEMY ACT

Mr. BINGHAM. Thank you, Mr. Chairman. I would like to summarize the situation briefly.

The Trading With the Enemy Act has had a varied history. It has been used by a number of Presidents to accomplish things that those Presidents wanted to accomplish at the time. Its powers are very broad and it has been subject to, if not abuse, at least stretching to the breaking point.

It was this act, for example, that was used by President Roosevelt in his demonetization of gold in 1933. It is this act which today is used by the administration to carry on the Export Administration Act functions including the previous provisions dealing with the Arab boycott and to do so, believe it or not, under an emergency declaration in 1950 at the outset of the Korean war.

Similarly, it is the authority in the law today under which the embargo against Cuba is maintained, the embargo against Vietnam and North Korea, the freezing of assets of other Communist countries such as China, Czechoslovakia, and so on.

What we have done in our proposed bill, while it may look somewhat formidable in H.R. 7738 that you have before you, is really not all that complicated. We have left the Trading With the Enemy Act substantially unchanged but have limited its application to the case of a declared war.

GRANDFATHERING OF EMBARGOES OF CUBA AND VIETNAM

We have also in title I grandfathered in essentially those actions taken under the Trading With the Enemy Act which it would be extremely difficult, if not impossible, to persuade the Congress to reverse at this time. I refer to the embargo against Cuba, the embargo against Vietnam and so on.

It is our hope, and we feel, that the bill in the form we have presented it is not very controversial. What we are focusing on is a procedural arrangement, and we are avoiding substantive issues of controversy.

I think for us to attempt to deal with those controversial substantive issues would be a mistake even though I personally favor lifting the embargo against Cuba and Vietnam. But I think if we attempted to do that now, we would get this bill all messed up, and we would probably not succeed. I think in time those embargoes will be lifted, but I think that will probably not occur until the President has made up his mind that that should be done and then persuades the Congress to concur in that judgment.

So we have grandfathered in those actions currently being taken under the Trading With the Enemy Act. That appears on page 2 of the bill. The only qualification on that is the following: We do provide

that at the time of the termination of emergencies under the National Emergencies Act, which is September 1978, the President would, if he chooses to extend these uses of authorities, have to explain his act—to state that it was necessary in the national interest to extend these powers for a 1-year period. He would be required to make such a statement annually thereafter so long as he considered that it was necessary in the national interest to continue any of these powers.

Notice that we are not requiring the President to declare that there is an emergency, nor are we requiring that he continue the phony emergency of 1950. We are simply saying that the President must in effect review the decision annually, report to Congress and provide an explanation for his actions.

There are certain other relatively minor changes in the original Trading With the Enemy Act, and then there is an increase in the criminal penalties which the administration asked for and which is in line with the criminal penalties provided in the Export Administration Act which the Congress has now passed.

INTERNATIONAL ECONOMIC EMERGENCY POWERS

Title II provides for emergency powers to be exercised in other types of situations to deal with what the bill calls any “unusual and extraordinary threat which has its source in whole or in substantial part outside the United States to the national security, foreign policy, or economy of the United States,” and provide that in such a case the President can declare a national emergency with respect to that threat. The bill then grants the President authority to take a variety of actions under that emergency.

These powers are substantially the same as those granted in the Trading With the Enemy Act with the following exceptions: The President would not have the power, as he does under the Trading With the Enemy Act, to seize property or to seize records, and he would not have the power to deal with bullion and gold, as is provided in the Trading With the Enemy Act.

The powers granted are spelled out in section 203 under the term “Grant of Authorities” on page 4. And as I say, they are, with the exceptions I have mentioned, substantially the same as those provided under the Trading With the Enemy Act.

I want to call attention to a limitation—

Mr. SOLARZ. Would the gentleman yield?

Mr. BINGHAM. I will be glad to yield.

DIFFERENT POWERS UNDER WAR AND UNDER OTHER EMERGENCY SITUATIONS

Mr. SOLARZ. I appreciate the gentleman's explanation. I wonder if you could elucidate one point here on which I am not quite clear. Could you precisely describe the authority this legislation would convey on the President in a state of national emergency other than one resulting from a formal declaration of war and the precise powers the bill would convey on the President in a national emergency which had been legitimatized, as it were, by a declaration of war by the Congress? In other words, what can you do under one emergency but not under the other?

Mr. BINGHAM. What he can do under the emergency under title II is spelled out in section 203. For example, to investigate, regulate, or prohibit any transactions in foreign exchange, transfers or credits or payments between banking institutions to the extent they involve any foreign interest. The importing or exporting of currency or securities, and then under B, "to investigate, regulate, direct and compel"—and so on—"any acquisition holding, withholding"—and so on—"with respect to transactions involving any property in which a foreign country or a national thereof has any interest."

What this adds up to is, as I have said before, in effect, the same powers that have existed under the Trading With the Enemy Act with the exception of the power to seize property, the power to seize records and I should add, the power to take action with respect to purely domestic transactions. The kind of power that was exercised, for example, with respect to the demonetization of gold would not come within the authority of the more limited powers of title II.

Mr. SOLARZ. What would be an example of a national emergency the President could declare unrelated to war under this bill which would give him these authorities?

Mr. BINGHAM. A very obvious example would be a case where the United States was engaged in hostilities where there was no declaration of war, such as the war in Korea, or the war in Vietnam. I think that it would be logical to conclude that the President could declare an emergency and take certain action if there were a sudden drain on the resources of the United States through such a serious imbalance of trade as to require emergency action.

Mr. SOLARZ. For argument sake, let us say there was another oil embargo. Would that constitute potentially the kind of nonwar national emergency?

Mr. BINGHAM. I think quite clearly it would.

Mr. SOLARZ. If it would, and the President declared a national emergency pursuant to such an embargo, could you explain in lay language what precisely he would be able to do under his powers? When it talks about regulating the controlling foreign assets, does that mean he could freeze the assets of the boycott of the country that established the embargo?

Mr. BINGHAM. Correct, freeze but not seize. There is a difference.

Mr. SOLARZ. So if he had money he could tie it up and say in effect when you lift the embargo, we will lift the freeze?

Mr. BINGHAM. That is correct. He can also regulate exports in a manner not regulated by the Export Administration Act.

Mr. SOLARZ. Which means he could in effect establish an embargo on exports to that country?

Mr. BINGHAM. Correct.

Mr. SOLARZ. For any reason once he had declared the national emergency?

Mr. BINGHAM. That is correct.

Mr. SOLARZ. He declares the national emergency pursuant to this bill, the Congress has the right to repudiate that declaration through a concurrent resolution?

Mr. BINGHAM. That is correct.

Mr. SOLARZ. If we feel it is unjustified.

One final question. In the event that there is a declaration of war, the President's authority under this bill is expanded above and beyond the authority he would have in a national emergency unrelated to a declaration of war by giving him specifically the power, which in the first instance he would not have had, to take title to foreign property or to seize their property, records, and that sort of thing, right?

Mr. BINGHAM. I do not think there is any expansion of powers here. Notice what we have done in section 101. The very key to this structure is that we have limited the Trading With the Enemy Act coverage to a condition of declared war. The original Trading With the Enemy Act includes the phrase which appears in section 101 "or during any other period of national emergency declared by the President." That was why the Trading With the Enemy Act was so broad that the President could do virtually what he wanted under it under any kind of an emergency and it did not have to involve war or hostility or anything else. Its powers were enormously broad so the President could do virtually what he wanted. This was really a dangerous situation in that it virtually conferred on the President what could have been dictatorial powers that he could have used without any restraint by the Congress.

Mr. SOLARZ. I think the bill makes a very useful distinction between two different kinds of national emergencies; one, pursuant to a declaration of war and, another, pursuant to a Presidential declaration in a situation which does not involve a declaration of war. My point simply was, if I understand this correctly, under the former, he can do more than he can do under the latter.

Mr. BINGHAM. That is correct.

Mr. GOODLING. Mr. Chairman.

Chairman ZABLOCKI. Would the gentleman yield to Mr. Goodling?

ADMINISTRATION POSITION ON H.R. 7738

Mr. GOODLING. Have you had any feedback from the administration with respect to your proposal?

Chairman ZABLOCKI. We will hear the executive branch's position.

Mr. BINGHAM. During meetings of the subcommittee, we had administration representatives there at all times. They have given us a great many comments, and we have modified the bill in substantial ways to meet their objections to the original draft. I have not yet read Mr. Bergsten's testimony, but I hope in a general way the administration will not quarrel too much with the form in which the bill is now. We will get to that as soon as I finish, and I am almost finished.

Let me point out one or two other things that I think might involve some controversy.

TITLE II OF H.R. 7738

On page 6, and bear in mind we are now dealing with title II, which covers emergencies short of a declared war, we do spell out certain limitations on the power of the President which we felt it would be desirable to spell out in the interest of preserving certain basic freedoms under the Constitution. The President would not have the authority to regulate or prohibit personal postal or telegraphic com-

munications which do not involve transfers of value; would not have authority to regulate or prohibit the collection and dissemination of news by the news media; and finally, would not have authority to regulate or prohibit uncompensated transfers, except to the extent he determined they would seriously interfere with his ability to deal with the threat or in response to coercion, or would endanger the Armed Forces. So with those safeguards, voluntary transfers would not be prohibited.

Section 204, "Consultation and reports," I do not think is controversial. It simply indicates the President would explain to the Congress what he was doing and transmit reports, and so on.

Sections 205 and 206 deal with issuance of regulations and definitions by the President. Here we have done something which I know the administration is not happy with. We decided after considerable discussion in the subcommittee to recommend that the Congress have a veto power over such regulations and definitions, and that is provided in section 206.

The administration, of course, takes the position that concurrent resolutions are improper, but I think this is an area where we simply have to agree to disagree. The Congress for years now has been using the concurrent resolution as a legislative device, and some day it may have to be tested in the courts.

The reason we put in that congressional veto over regulations is, first, we do not expect there to be a great many regulations. It is not like a regulatory agency which will be issuing regulations every week. We expect these regulations and definitions to be initially issued and then maybe modified slightly from time to time.

In the past, there have been cases where the power to make definitions was stretched by the President to an inordinate degree. President Roosevelt, for example, under the Trading With the Enemy Act, defined banks to include private nonbanking institutions. And we just think it wise to include this power. I might say I have not supported the efforts of our colleague from Georgia, Mr. Levitas, to include this kind of congressional veto on every bill that contains power to issue regulations, but in this case, I think it is justified.

Section 207 again sets up the same penalties, increasing them from the previous.

Section 208 does take a little explanation. This provides for the possibility that at the end of an emergency, there might be need for the President to continue the freezing of assets as the kind of authority that may have to extend beyond the emergency. An example of that is the situation today with respect to Chinese assets or Czechoslovak assets held in this country, which are frozen, and legitimately so, until we can resolve the problems that we have in negotiating for the payment of claims against those countries for taking over American properties.

So this provides for an extension of the authority to freeze assets in cases arising in the future under the National Emergencies Act.

AMENDMENT TO EXPORT ADMINISTRATION ACT

Finally, title III contains an amendment to the Export Administration Act which is necessary if the President is to continue to exercise powers which he has been exercising under the authority of the

Trading With the Enemy Act. That has to do with controlling the activities of subsidiaries abroad that are subject to the jurisdiction of the United States. This is an amendment to the Export Administration Act which we did not make in the amendments that we recently enacted and passed by the Congress. It has been, as I say, that extension of the powers on the Export Administration Act has been done under the authority of the Trading With the Enemy Act, and that is why it is necessary in this bill to continue to provide for the exercise of such powers.

That, Mr. Chairman, completes my summary.

[Mr. Bingham's prepared statement follows:]

PREPARED STATEMENT OF HON. JONATHAN B. BINGHAM, CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE

The National Emergencies Act, passed last year, terminates as of September 14, 1978, all powers and authorities possessed by the executive branch as a result of any existing declaration of national emergency. It sets forth procedures for declaring and terminating future national emergencies, including provision for congressional termination of states of emergency by concurrent resolution. This will have the effect of rendering inoperative four declarations of national emergency, dating back to 1933, which have never been terminated, and which activate some 470 statutes conferring special emergency powers on the executive branch.

However, certain emergency authorities which are currently being exercised were exempted from the provisions of the National Emergencies Act, and the appropriate standing committees of each House were directed to study and report their recommendations to the House and Senate on the problems involved with terminating the use of these authorities. Of these exempted authorities, by far the most important from a practical and policy standpoint is section 5(b) of the Trading With the Enemy Act, over which this Committee and the Subcommittee on International Economic Policy and Trade have jurisdiction.

The reason section 5(b) of the Trading With the Enemy Act was exempted was that congressional and executive officials could not agree whether—or to what extent—uses of section 5(b) should be subject to the National Emergencies Act requirements. The exemption was designed to give the Congress and the executive branch more time to determine an answer to that question, as well as what revisions might be made in the Trading With the Enemy Act itself to bring it into closer conformance with the purposes of the National Emergencies Act. What we have tried to do in this bill, as the National Emergencies Act directs, is to come up with a solution to these problems.

The basic approach of the bill is to leave the authorities of the President in time of war essentially as they are, but to make future uses of these authorities in times of "national emergency" declared by the President subject to the requirements of the National Emergencies Act. That is accomplished in a proposed new statute, the International Emergency Economic Powers Act, title II of H.R. 7738 which is before us.

Let me emphasize at the outset that this bill does not deal with specific current uses of 5(b) authorities—nearly all of which are controversial. It is a bill, like the National Emergencies Act itself, which provided the occasion for this review of the Trading With the Enemy Act, that attempts to lay down policies and procedures for future emergencies and future use of these international economic authorities. This bill makes no decisions or judgments about existing U.S. embargoes or controls on foreign assets. Indeed, the subcommittee meticulously avoided having any effect on them, even though a number of us have strong views one way or another about some of these existing uses, as do other members of this committee. We did so because we feel, and we hope this committee will agree, that to achieve the important procedural improvements for future use of these authorities contained in this bill, we must not—we dare not—weigh the bill down with controversy over existing policies which involve uses of some of these powers. H.R. 7738 neither condones nor condemns existing policies. It only provides that future actions and policies in this area must be subject to clearer policies and procedures, including opportunity for congressional veto in a number of respects, than past uses have been, whatever the merits of those past uses. I urge the committee to view this bill in that way and to suppress the natural

desire to make this bill an expression of views or constraints on existing policies involving these authorities. To do that will be, I think, to lose the bill on the floor, and lose the improvements it contains in the mechanisms for making international economic policy decisions.

One of the reasons some current uses of these authorities are so controversial is that the procedures by which they came to be used have been so weak and unsatisfactory. But we should not go back and try to change those uses, and that is not our purpose here. Our purpose is to help assure against future unsatisfactory uses by improving the procedures that apply.

Now just what international economic authorities are we talking about here, and for what are they generally used. The particular authorities we are talking about are the following: investigation, regulation, or prohibition of foreign exchange transactions, banking and credit transactions involving any foreign interest, the import or export of currency or securities, and foreign property under U.S. jurisdiction.

One or more of these authorities are used:

To implement or help implement (in conjunction with export controls) trade embargoes, including both complete embargoes (like the ones we now have on Cuba, Vietnam, etc.) and more limited embargoes (like the embargo on national security items we impose primarily against Communist countries).

To freeze foreign assets in this country, particularly of countries against whom we have unresolved claims (such as, at the moment, Czechoslovakia, and East Germany). Such freezes may occur as part of a total embargo (such as Cuba), or not (such as the People's Republic of China, Czechoslovakia).

The Trading With the Enemy Act was passed in 1917, in conjunction with United States entry into World War I, "to define, regulate, and punish trading with the enemy." Section 5(b) authorized the President to regulate certain economic transactions with foreign nations, specifically excluding "transactions to be executed wholly within the United States," in time of war declared by Congress. As amended over the years, principally in 1933 and 1941, section 5(b) has come to constitute and to be construed as a vast array of authorities to regulate transactions, both domestic and foreign, in time not only of war but also of "national emergency" declared by the President with respect to any situation whether or not it is international in character.

Section 5(b) has become a grab-bag of authorities which Presidents have been able to use to do virtually anything for which they could find no specific authority. Since there are four declarations of national emergency in effect, dating back to 1933, these authorities have been routinely available for 44 years.

In 1933, President Roosevelt, citing the authority of section 5(b), declared a national emergency and, under that emergency, a bank holiday to prevent hoarding of gold, despite the fact that at the time section 5(b) was explicitly limited by its terms to wartime use. Congress ratified this usage retroactively by amending section 5(b) on the first day of its 1933 session. In 1940 and 1941 President Roosevelt issued a series of executive orders under section 5(b) freezing the assets of the Axis powers and of countries conquered by them. These freezing orders were also ratified by act of Congress. In August, 1941, the President ordered imposition by the Federal Reserve Board of consumer credit controls as a measure to fight inflation. Finding the authority of section 5(b) to regulate transactions involving "banking institutions" too narrow for his purposes, the President in his executive order defined banking institutions to include even vendors of "consumer durable goods" engaged in extending credit. Although this was beyond the authority of section 5(b), this usage was also ratified retroactively by Congress in the First War Powers Act of 1941.

In 1968, President Johnson imposed foreign direct investment controls, citing the authority of section 5(b) and the continued existence of the national emergency declared by President Truman in 1950 with respect to hostilities in Korea. On several occasions, including at this moment, export controls have been continued in effect during lapses in the Export Administration Act under executive orders citing the 1950 emergency. Currently, section 5(b) is cited as authority for trade embargoes in effect against North Korea, Vietnam, Cambodia, and Cuba, continued blocking of certain assets of the PRC and various East European countries, regulation of non-U.S.-origin strategic goods to Communist countries by U.S. foreign subsidiaries, and the continuation of export controls.

This brief and partial enumeration of past and current uses of section 5(b) will suffice to illustrate the range of activities which can be engaged in by Presidents under the authority of that section. All of these activities, it must be empha-

sized, take place entirely at the President's discretion, with no statutory provision for congressional action or even review. The problem faced by the subcommittee was to place necessary limits on the exercise of these emergency authorities by the President, while still providing him with necessary flexibility to react to unforeseen emergencies in the future.

The subcommittee devoted 5 days of hearing to this problem in March, April and May of this year, preceded by over 1 year of staff work, including preparation of the first complete legislative history of the Trading With the Enemy Act and its uses—the thick (brown) volume on members desks. The subcommittee heard expert legal scholars, public witnesses, public interest organizations, the business community, and four administration witnesses.

The following recommendations emerged:

That we should establish tighter procedures for future use of these powers, including consultation and reporting requirements, time limits on the use of the powers without review, and provision for congressional (as well as Presidential) termination. Since the National Emergencies Act already provides such procedures for all authorities based on national emergency, it seems logical to make the uses of international economic emergency powers subject to the National Emergencies Act, and that is what H.R. 7738 does.

That we should limit somewhat the scope and uses of international economic authorities in times other than war by carefully defining both the authorities and the circumstances under which they can be used—that is, what constitutes a “national emergency” for purposes of these authorities. As the committee can see, H.R. 7738 limits the use of these authorities to situations of “unusual and extraordinary threat . . . in whole or major part from a source outside the United States . . . to the national security, foreign policy, of economy of the United States. It should be emphasized that authorities to meet other kinds of emergencies, or to take other remedial actions than those provided in this act, are provided in other statutes. One of the more difficult tasks the subcommittee faced was removing from this proposed statute authorities which are provided elsewhere, in other statutes, on an emergency or nonemergency basis.

That future uses of these authorities should be limited to the particular circumstances for which a national emergency was declared, and no other—and that any use of the authorities for a different situation be possible only if a separate national emergency were declared. This recommendation, endorsed by the administration as well as virtually all witnesses, recognizes that one of the major factors that caused the existing Trading With the Enemy Act to constitute such an unfettered grant of authority to Presidents was that a single declaration of national emergency permitted Presidents to use these authorities to deal with various situations, no matter how far removed from the original purpose of the national emergency.

That existing uses of these authorities in some way be grandfathered so as not to disrupt current policies that are dependent upon uses of Trading With the Enemy Act authorities under the old rules—however inadequate those rules were. Here I return to the point I emphasized earlier. The Administration requested—and pressed very hard—for a complete and total grandfather. This would have allowed the President to continue to use existing authorities, without even a need to justify their continued use, for as long as he might like. Some members of the subcommittee felt that existing uses should be justified and subject to all the new limits of the National Emergencies Act. That, however, would have required new declarations of national emergency with respect to particular countries that might prove diplomatically embarrassing. So the subcommittee settled on a limited grandfather of existing uses of international economic emergency authorities. The President may continue to use them without declaring any new emergency simply by notifying the Congress that continued use of these authorities is in the national interest, and why. These uses will not be subject to termination by concurrent resolution of Congress (as future uses will be), but will have to be extended annually or terminated. As I said before, while this solution may seem to make it rather easy for the President to continue present uses of these authorities the subcommittee felt, on the whole, that this was necessary to assure needed reforms for future uses of these authorities.

Mr. Chairman, this bill was reported out of the subcommittee by voice vote without dissent, and I believe it has the bipartisan support of the subcommittee. It was also drafted in full consultation with the administration and in several respects uses language proposed by the administration. While there are un-

doubtedly specifies which the administration may still think go too far or not far enough, and while there are some respects in which the bill does not go as far as some members would prefer out to deference to the administration's position, I think the bill represents a compromise which accomplishes our purposes in ways with which we can all live. I urge favorable consideration by the committee.

POWER TO FREEZE ASSETS

Chairman ZABLOCKI. Would the gentleman yield? As to section 208, the savings provisions, I note on page 10, in provision B under subparagraph 2, the authorities to freeze could be terminated by the Congress by concurrent resolution. Is that to mean also that the Congress has the authority by concurrent resolution to prohibit a freeze or discontinue the freeze? Also, is it intended that Congress be advised if the President takes any action to negotiate or release frozen funds.

Mr. BINGHAM. I am not sure I understand the chairman's question.

Chairman ZABLOCKI. In provision B, you make very clear that the freezing of any funds would be terminated if Congress passed a concurrent resolution terminating the national emergency.

Mr. BINGHAM. That is right.

Chairman ZABLOCKI. Is it also the gentleman's understanding that if the President or the executive branch on their part should decide to negotiate any of the frozen funds that Congress be advised as to their action?

Mr. BINGHAM. I would certainly assume so, yes. And I think if there is any doubt about that, it could be specified in the committee report.

Chairman ZABLOCKI. I think we should. I thank the gentleman.

Mr. Whalen.

SUBCOMMITTEE ACTION ON H.R. 7738

Mr. WHALEN. Thank you, Mr. Chairman. I will just be very brief. I do want to commend the gentleman from New York, Mr. Bingham, for his presentation, and I want to make only a few comments of a supplementary nature.

First, this is essentially a bill establishing procedures and not a bill that sets out or judges specific policies. It recognizes relevant pieces of legislation creating a new act in the process and provides a more consistent and appropriate framework for Presidential authorities.

Second, the subcommittee, in its deliberations, has attempted to respond to the administration's concern in this area particularly with the view of minimizing its policy problems during the transition period to a new legislative framework and even after that point. Specifically, we have stipulated Presidential discretion to continue any controls currently in effect.

Third, the subcommittee has tried to create a necessary analogue of the war powers legislation passed by this committee and the Congress in 1973. Congress is as much at fault as any administration if it allows the President to carry out policies, wise or unwise, under blanket authority granted by defective legislative statutes.

This bill will, I hope and expect, in conjunction with the War Powers Resolution, call the President to produce the policy justifications Congress has the right to expect. This will restore an organic relationship between the two branches,

I urge my colleagues on the committee to support this legislation which has, in my opinion, been thoroughly aired in the drafting stage.

Chairman ZABLOCKI. Are there any further questions of the sponsors of the bill, H.R. 7738?

[No response.]

Chairman ZABLOCKI. If not, we will hear from Mr. Bergsten.

STATEMENT OF HON. C. FRED BERGSTEN, ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS, DEPARTMENT OF THE TREASURY

Mr. BERGSTEN. Thank you very much, Mr. Chairman. Let me say at the outset, it has really been a great pleasure for us in the administration and for me personally to have worked very closely with the subcommittee, especially Chairman Bingham, Mr. Whalen, and others, in trying to develop this legislation. We do have a couple of differences remaining that I will indicate in my testimony, but as to basic framework, fundamental approaches, we have worked very closely and cooperatively. And I think come to similar judgments about the best course of this legislation.

HISTORY OF TRADING WITH THE ENEMY ACT

As you well know, this bill had its genesis with the introduction of H.R. 1560 earlier in the congressional session, a bill which would have repealed completely section 5(b) of the Trading With the Enemy Act. The hearings that were held on that bill and the subsequent markup in Mr. Bingham's subcommittee gave both the Congress and the new administration a most welcome opportunity to evaluate the powers and procedures which had been provided under section 5(b). We greatly welcomed that opportunity for review and supported the need for change in that legislation.

In a real sense, of course, the bill before us today had its genesis in the enactment of the Trading With the Enemy Act in 1917 and in the subsequent, occasionally hurried, amendments to that act. In the midst of the 1933 banking crisis, and again in the hectic days preceding the Second World War, Congress added to the President's economic authorities to be exercised in wartime or during other periods of national emergency.

In contrast with those crisis situations in which Congress has previously amended the act, the current proposal and any new legislation will have the benefit of careful and deliberate consideration by all parties concerned, and we certainly commend the committee for taking the initiative in that direction.

NATIONAL EMERGENCIES ACT

Now, in the National Emergencies Act adopted late last year, Congress provided for procedural constraints it believed were required in the use of national emergency authorities in order to avoid unending states of national emergency.

However, Congress also recognized that the national emergency powers conferred under section 5(b) were complex and affected sensitive foreign affairs areas.

Accordingly, section 5(b) was excepted from the new procedures embodied in the National Emergencies Act to afford the appropriate congressional committees an opportunity to study that section to determine what changes would be appropriate.

The bill before us today reflects the development of a congressional response to the requirement of the National Emergencies Act, and we are pleased to have worked closely with the subcommittee in that effort.

ADMINISTRATION RECOMMENDATIONS

Back on April 26 in testimony before Mr. Bingham's subcommittee, Assistant Secretary of State Katz and I personally stated the belief of this administration that procedural reforms were very definitely needed in the way of which section 5(b) powers are exercised.

Accordingly, we recommended that in the future, the President be required to proclaim a new national emergency for any new application of section 5(b) powers. This would avoid reliance on outdated emergency declarations, such as the use of the 1950 emergency relating to the threat of Communist aggression to implement balance-of-payments controls in 1968, a linkage which is not too clear as one looks at it in retrospect.

We also testified that annual review and renewal of future national emergencies would be desirable. And in accordance with the accountability and reporting requirements contained in the National Emergencies Act, we supported keeping Congress and the public fully informed on the uses of section 5(b).

I am very pleased, and the administration is very pleased, to note the bill before us today does incorporate all of these suggestions.

Let me turn for a moment to the specific provisions contained in H.R. 7738.

The administration supports the basic approach of the bill which is to separate the wartime from the national emergency powers by leaving the wartime powers in section 5(b) and placing the emergency powers in a separate statute. We also believe that the subcommittee has adopted a sound procedure for continuing the existing uses of section 5(b), to which Mr. Bingham has just referred. The procedure contained in section 101(b) of the bill enables the President after September 1978 to extend for a 1-year period section 5(b) authorities being exercised as of the present time if he determines that such extension is in the national interest of the United States.

The administration also supports the requirement of section 202 which states that a national emergency for purposes of this International Emergency Economic Powers Act must be based on an unusual and extraordinary threat to the national security, foreign policy, or economy of the United States. We believe that this approach emphasizes that such powers should be available only in true emergencies, a view which we most certainly share.

FOREIGN INTERESTS

The qualification contained in section 202 that the threat be from a source in whole or substantial part outside the United States will preclude, or at least may preclude, certain uses of this act which were heretofore authorized by section 5(b).

Similarly, the bill in its section relating to the President's power to act with respect to transfers of credit and payments between banking institutions limits those powers to transfers or payments which involve the interest of any foreign country or nation thereof.

This foreign interest qualification does represent a deletion of power which is now conferred under section 5(b). However, powers to regulate domestic transactions may be available pursuant to other statutes. The administration is reviewing these qualifications to determine their impact on the powers and authorities available to the President.

UNCOMPENSATED TRANSFERS

The language of section 203(b)(3) which precludes the regulation or prohibition under the act of uncompensated transfers of anything of value is troublesome to us. We are sympathetic to the purpose of this provision, but we believe its wording would prevent the President from regulating or prohibiting activities which, if permitted, could damage the national interest.

We should emphasize and fully support that this bill carefully limits the circumstances in which national emergency powers may be invoked in the first place. Accordingly, when those circumstances are present, we believe that the President should be able to exercise very tight controls to meet what are, by statutory definition, extraordinary and unusual threats.

We, therefore, recommend that the committee might wish to adopt the language contained in section 38 of the Trading With the Enemy Act which permits only the donation of food, clothing, and medicines intended to be used to relieve human suffering to escape the normal kinds of control network.

CONGRESSIONAL VETO OF REGULATIONS

Our source of greatest concern in the bill does relate to section 206, as Congressman Bingham has already indicated, which provides for additional congressional review of regulations in the bill. We fully agree that Congress should oversee closely the exercise of these national emergency powers. The bill, with our full support, contains numerous procedural restraints on the use of emergency authorities through its consultation provisions, its reporting and accountability requirements, notably the requirement for annual renewal of any emergency, in addition to all of these requirements contained in the National Emergencies Act itself.

Furthermore, Congress may, of course, always modify or revoke the President's emergency powers through legislation. Thus, we believe there is no need for additional review as provided in section 206 through the so-called congressional override provision via a concurrent resolution.

Furthermore, as you know, it is the administration's position that congressional disapproval by concurrent resolution of regulations issued pursuant to law in the administration of ongoing programs does violate the constitutional principle of the separation of powers. A similar concurrent resolution mechanism has been included in this bill for purposes of terminating declared national emergencies through the adoption of that provision now contained in the National Emergencies Act.

We strongly oppose both of these provisions. As Congressman Bingham indicated, we, I guess, agree to disagree on that fundamental constitutional point. But we would submit in addition, Mr. Chairman, that there are so many safeguards built into this particular bill, all of which we support, that we find it hard to see there is a need for an additional safeguard through the provision of concurrent congressional resolution override in this particular case.

In essence, my point is that without trying in this case to resolve the constitutional issue on which there are differences of view, it might be possible to avoid this particular item simply by looking at the wide array of controls and congressional oversight authorities which we fully support, which are already in the bill without controversy.

Finally, therefore, let me say again that it has been a great pleasure to have worked with the committee and subcommittee and its staff in drafting a bill which meets our joint concerns in providing both adequate national emergency powers and adequate restraints on the use of such powers. We think the bill before the committee today makes very significant strides in that direction, and we fully hope that a formulation satisfactory to both the Congress and the administration can be worked out. Thank you.

Chairman ZABLOCKI. Thank you, Mr. Bergsten.

I gather from your statement you are representing the entire executive branch in your testimony, not just the Department of Treasury?

Mr. BERGSTEN. That is correct, sir.

CONSULTATION WITH CONGRESS

Chairman ZABLOCKI. Section 204A would require the President to consult with the Congress before exercising any of the authorities granted by the act. How do you perceive this requirement of consultation? Must the President consult before he declares a national emergency or after he has made such a declaration but before he has actually exercised authorities? Also, what type of consultation would take place?

Mr. BERGSTEN. Mr. Chairman, we fully support this provision of the bill which would require the President to consult with the Congress before exercising the authorities in every possible instance. Given the nature of the issues arising under this legislation, national emergencies that constitute extraordinary threats to the foreign policy or national security of the country, I think it is difficult to envisage the precise procedures that would be carried out for that consultation process. We would certainly make every effort to talk to the leadership of the key committees, the leadership of the Congress as a whole before any action were taken. If time permitted, fuller consultations than that might occur. We do, though, have to indicate that emergencies might arise so quickly and perhaps at times when the Congress was not in session or where there were simply difficulties in communicating where one would simply have to do the best he could in trying to find key Members of Congress to carry out that consultation.

I think it is because of that unusual circumstance which is peculiar to this kind of legislation that the clause "in every possible instance" was put in and agreed to by the subcommittee.

Chairman ZABLOCKI. Would you agree with the interpretation of Congressman Bingham as to the savings provision that consultation is also required to unfreezing blocked assets?

Mr. BERGSTEN. I would, and I think in that case probably the opportunity to consult would be clearly more available than on the other side of the equation.

Chairman ZABLOCKI. The requirements of section 204 regarding consultation and reporting to the Congress are supplemental to those contained in title IV of the National Emergencies Act. In what way are they supplemental? What else is required by the National Emergencies Act?

Mr. BERGSTEN. Under the National Emergencies Act, all that is required is for the President to make periodic reports to the Congress on activities undertaken under the authority of that act. This section would go much further in requiring both the advanced consultations that we just discussed and requiring a specific set of reports to be issued and submitted by the President detailing, as it says in the bill, the underlying circumstances, the action he has taken and how it relates to the underlying circumstance and what he believes are the measures necessary to carry out his responsibilities having declared that emergency.

CURRENT APPLICATION OF TRADING WITH THE ENEMY ACT

Chairman ZABLOCKI. Mr. Bergsten, under what circumstances, to what countries, and in what ways, is the Trading With the Enemy Act currently being applied?

Mr. BERGSTEN. Mr. Chairman, there are now four different sets of uses of the Trading With the Enemy Act, section 5(b) thereof, which I detailed in my testimony to the subcommittee in late April. We have a foreign assets control regulation which prohibits persons under U.S. jurisdiction from engaging in unlicensed commercial or financial transactions with three countries, North Korea, Vietnam, or Cambodia. In addition, current commercial or financial transactions with the People's Republic of China are authorized as long as strategic goods are not involved.

Chinese assets are blocked for possible use of an asset settlement. So there are three comprehensive embargoes—North Korea, Vietnam, Cambodia; one part way, the China situation.

A second set of controls now used under that authority of the Cuban asset regulations, which are parallel to Korea, Vietnam, and Cambodia with the exception that U.S. foreign subsidiaries may engage in certain types of Cuban trade under license.

The third set are the transaction control regulations which essentially are back up to the export controls administered by the Commerce Department under the Export Administration Act and applied to a variety of countries in that context.

Finally, we have the foreign funds control regulations which continue to block property of Czechoslovakia, East Germany, and Lithuania,

pending settlement with those countries for their illegal expropriation of private property following World War II. Those are the four sets of regulations that are now applied under the current authority.

Chairman ZABLOCKI. Thank you, Mr. Bergsten.

Mr. Bingham.

ADMINISTRATION'S COOPERATION

Mr. BINGHAM. Thank you, Mr. Chairman. I have no questions other than I just would like to say Assistant Secretary Bergsten has been very complimentary to the committee, and I would like to return the compliment by saying we really have had excellent cooperation from the administration. They have been prompt in answering our inquiries, and it has been a pleasure working with them. I am very pleased on the whole with Mr. Bergsten's statement.

We do have some differences. I do not think they are vital, other than perhaps the difference over the concurrent resolution, which we certainly cannot resolve. Thank you.

Chairman ZABLOCKI. Mr. Whalen.

Mr. WHALEN. Thank you, Mr. Chairman. I, too, would like to express my appreciation to the Secretary for his fine testimony this morning.

POWER TO REGULATE DOMESTIC TRANSACTIONS

I would like to proceed a little further with respect to the differences that I see between the subcommittee and the administration. There are perhaps two, and possibly three, areas at issue. The first, section 206, congressional review of regulations, as Mr. Bingham has pointed out, will I suppose, not be resolved. Let me turn then to section 202. This refers to international threats. I would like to ask you, Mr. Secretary, does the Treasury need any authority for dealing with domestic problems which formerly were extended to the President under the Trading With the Enemy Act?

Mr. BERGSTEN. The administration is reviewing that issue right now. Within Treasury, we have taken a look at other statutes and believe that they are adequate to provide needed authority. However, the administration as a whole is now looking at the issue carefully, and we would hope to have a firm answer for you on that within a few days.

Mr. WHALEN. So what you are saying then, is the Treasury Department has no concerns with respect to its ability to handle domestic issues; there are presently statutes which would confer authority upon you to deal with these problems?

Mr. BERGSTEN. That is our belief.

Mr. WHALEN. Other agencies have not made any determination as yet. You say within a few days?

Mr. BERGSTEN. Yes; we are actively reviewing it now. Other agencies are looking at the situation themselves, and we will have a joint view on that in the very near future.

Mr. WHALEN. Fine.

UNCOMPENSATED TRANSFERS

The other area is the question of uncompensated transfers, section 203(b). I do not quite understand your concern in view of the language in the bill. Could you answer why the Presidential discretion provided

in this section is not sufficient for you to handle the problems or concerns that you may have?

Mr. BERGSTEN. Well, it is simply that under subparagraph 3 of that provision, the President would have to determine that any such transfers would seriously impair his ability to deal with the underlying situation. And it might be difficult in every individual case for him to indicate that restraining the transaction would seriously impair his authority.

Mr. WHALEN. Under those circumstances, then, should he endeavor to see—

Mr. BERGSTEN. I was going to say, one, however, takes all those conceivable transactions together, they could represent a potentially significant leakage in the kind of embargo one was trying to carry out effectively. I think my answer to that question really takes me back to my statement. We are in full accord with the committee that the circumstances under which any action at all under this statute should be taken, should be very rigorously circumscribed. We do feel once those very rigorous conditions have been met and controls of this type are put into place that they should be carried out very tightly and implemented in as watertight a way as possible.

And so leakages, which this language would permit, could occur on a significant scale and we simply think are not needed and might impair the ability of the President and the administration to carry out and implement the controls in a sufficiently vigorous way.

Mr. WHALEN. You are not concerned, then, about single transfers, but rather a body of transfers; is that correct?

Mr. BERGSTEN. If a single transfer is going to, by itself, impair the effectiveness of the embargo or control situation, probably he could meet this particular test. It is rather a cumulative effect that I think would concern us more.

Mr. WHALEN. Thank you, Mr. Chairman.

Mr. BINGHAM [presiding]. Mrs. Collins.

Mrs. COLLINS. No questions.

Mr. BINGHAM. Mr. Solarz.

Mr. SOLARZ. Thank you, Mr. Chairman. Mr. Secretary, I think this legislation is a significant step forward, and I certainly think the chairman and the ranking minority member and members of the subcommittee are to be congratulated for their work.

HOSTILITIES SHORT OF DECLARED WAR

I have one concern with it, however, which I would like to get your reaction to because it seems to me that if a bill fails to take account of what is a somewhat new situation that now confronts us having to do with the enactment of the War Powers Resolution a few years ago, you concur, I gather from your testimony, with the separation the bill makes between the wartime and national emergency powers. I concur in the distinction as well. But it seems to me it is entirely conceivable that this country could be involved in the future in hostilities in a foreign country in a very significant way pursuant to the War Powers Resolution without necessarily having a declaration of war as the sanction and approval of our involvement in those hostilities.

As you may recall, under the War Powers Resolution, if the President sends American troops into a combat situation or into a situation

in which hostilities are imminent, he can only keep the troops there basically for up to 90 days in the absence of specific statutory authorization by the Congress entitling him to keep the troops in a combat situation, and I can conceive of a number of situations in which we might be involved in which the Congress might feel that we ought to be involved but might also feel it would be inappropriate to issue a formal declaration of war because of the political and symbolic significance of such an action.

If, in fact, American troops are engaged in hostilities pursuant to the war powers resolution, in a situation in which the Congress has specifically authorized their presence statutorily through the enactment of legislation, it would seem to me you might make a case that under those circumstances, some of the limited powers which the President has under this bill if there is a declaration of war, but which he does not have if there is simply a national emergency, he ought to have in the kind of situation I described as well.

POWERS AVAILABLE IN WARTIME EMERGENCY

There are two specific powers which he has when there is a declaration of war which he does not have when there is a national emergency. One is the power to seize foreign properties, as distinguished from freezing title to such property. It seems to me if Americans are dying overseas in a war which the Congress has statutorily approved, I am not necessarily opposed to giving the President the authority, if he deems it appropriate, to seize the property of the country in which we are fighting.

Second, he also has the power to control banking transactions, if there is a declaration of war, which he does not have if there is simply a declaration of national emergency.

It is, it seems to me, not inconceivable, particularly in a prolonged wartime situation, there could conceivably be a threat of a run on the banks which the President might deem it in the national interest to prevent by declaring a bank holiday. Once again, it seems to me, under these circumstances it might perhaps not be inappropriate to give the President that authority.

So what I would like to ask you is, do you think this suggestion makes some sense? In other words, to give the President in effect the same authority in the event that the Congress, pursuant to the war powers resolution, statutorily approves of our involvement in a foreign war, as it were, which in the absence of such an amendment to the bill, the President would not have unless there were a declaration of war.

Mr. BERGSTEN. I think you raise a very valid point, Mr. Solarz, which does have real merit. I think we would not resist your making that amendment which essentially would provide equal treatment for a wartime situation, if I understand you right, approved by act of Congress, but without a declaration of war.

Mr. SOLARZ. Precisely. The key here is it has to be approved by act of Congress, because if Congress does not approve it statutorily, the President is obligated under the terms of the War Powers Resolution to withdraw the troops; otherwise, he is in violation of the law. It seems to me there are situations in which the Congress might well feel—in fact I rather suspect it is likely if we are engaged in hostilities

in the future, we are likely to be engaged in them pursuant to acts of Congress under the War Powers Resolution that we are through a formal declaration of war.

I suspect the formal declaration of war has gone the way of the bow and arrow and the horse as an instrument of American military power.

If, in fact, that is the case, so long as you have that formal congressional action and American troops are involved in hostilities, you have a de facto equivalent of a declaration of war.

So under those circumstances, it would seem to me the President ought to have those limited additional powers.

There is one other thing I want to add to that. We were considering on page 6 of the bill, they included language which specifically denies the President the authority to regulate or prohibit several things in the absence of a declaration of war pursuant to the declaration of a national emergency—postal, telegraphic, telephonic, or other personal communications, selection and dissemination of news by the news media. My feeling here is that items 1 and 2 perhaps ought to be available to the President only under a formal declaration of war. There I am prepared to concede if we acted pursuant to the War Powers Resolution, I would still be prepared to deny the President that authority, but not No. 3, the uncompensated transfers of anything of value, except the President determines, et cetera. It seems to me No. 3 might well be included in the amendment I am suggesting so that if the President did send troops into hostility and the Congress did approve them statutorily, that, under those circumstances, the President would not be denied the authority contained in No. 3 which he would be denied under a normal national emergency, if one can use such a phrase. Does that make sense to you?

Mr. BERGSTEN. We would certainly support making that authority under paragraph 3 available in the conditions you indicate. As I mentioned before, we also have a real reservation about avoiding that particular authority, even under the more limited possible bill provided in this act, but we certainly support you on that.

DIFFERENCE IN POWERS AVAILABLE IN WAR AND OTHER EMERGENCY SITUATIONS

Mr. SOLARZ. One final question because I am glad we seem to be in agreement. Just to make sure I understand it and for those hardy souls on the committee who are still here and the staff's understanding, could you specifically explain what authority the President has if there is a declaration of war pursuant to this legislation, or assuming my amendment was adopted, pursuant to an act of Congress which the President does not have pursuant to a simple declaration of national emergency pursuant to this legislation?

Mr. SOLARZ. I am specifically interested in your answer in relationship to the amendment that I was talking about. In other words, I would like to know what powers the President would have if the kind of amendment I talk about was adopted, which he would not have under what otherwise would have been obviously a national emergency, because clearly in the absence of my amendment we are involved in hostility in another country, the President would declare a national emergency and, pursuant to this legislation, need various authority.

If we declare war, he would have some additional authorities.

What I am saying is, if we had the de facto equivalent of a declaration of war, which is congressional action pursuant to the War Powers Resolution, what additional authority would my amendment confer on—

Mr. BERGSTEN. There are three basic powers that would be covered. The first would be the control of banking transactions whether or not there was an international aspect to the issue. Under the provision of this statute, even in a nonwartime situation, the President would be given authority to control banking transactions when there was a significant international component to those actions but would not be authorized to control the purely domestic banking transaction problem which would be authorized under the wartime authority.

Mr. SOLARZ. What does that mean to someone who is not in commerce and banking? What specifically might the President do pursuant to this new authority with respect to banks?

Mr. BERGSTEN. Well, it is very hard to speculate, frankly, on any of the possible future uses of any of these authorities. You mentioned some earlier. But it is really very hard to speculate. As an economist, I would have to say that our economy is now so deeply intertwined in the world economy in terms of banking transactions, trade, and most everything else, that, quite frankly, I find it hard to envisage situations where a concern of this magnitude would be of purely domestic origin.

Nevertheless, the extent to which the problem was domestic or international could obviously vary from case to case and, under the wartime authority, a situation which was primarily resulting from purely domestic concerns, such as the solvency of the banking system back in 1933, would have an authorization for Presidential control whereas it would not under these more limited powers.

Mr. SOLARZ. In addition to the banking power, what other authority?

Mr. BERGSTEN. The section which you mentioned earlier would be the authority to vest foreign property that was under the jurisdiction of the United States. And that, of course, would be a rather significant difference.

The third, which is not as important in practical terms as it was in the past, has to do with authority regarding seizure of gold and bullion.

Legislation was passed a few years ago that authorized American citizens legally to hold gold. Therefore, that particular issue becomes less important now than it was 40 years ago.

Those, I think, are the three primary differences between the two sets of authorities.

Mr. SOLARZ. One final question, then. Leaving aside the bullion—even leaving that in—how would you answer the objection to the amendment I have talked about, that if, in fact, it was in the interest of the country to utilize that authority, the President could always go to the Congress and ask for legislation specifically authorizing him to do it. Are we not better off requiring him to go through the legislative process to get these strong authorities rather than kind of giving them a carte blanche in advance?

Mr. BERGSTEN. As I understand your proposal, it would hardly be a carte blanche authority in that it would be triggered by a congressional approval of continued American arms involvement overseas.

Mr. SOLARZ. Theoretically one might argue it is one thing for the Congress to vote to approve the continued use of American troops in hostilities, and it is another for them to approve a bank holiday or some other action with respect to the banks or the actual seizure of the property of the country in which the hostilities are taking place.

Mr. BERGSTEN. Just thinking hypothetically, I think the answer to this point would be that once the Congress had authorized that kind of military involvement that one could not predict how the situation would develop in the future, what its economic ramifications might be, and what action might have to be taken very quickly by a President to carry out the economic side of those hostilities, and, therefore, the time required to seek formal congressional action, particularly during a period when Congress might be out of session, would undercut the ability of the administration, of the President, to carry out his military activity with full effectiveness.

Mr. SOLARZ. I just hope my wise, able, perspicacious, and thoughtful friend who is chairing the committee will give some thoughtful considerations to this proposal because I do think the requirement for the Congress to act affirmatively under the terms of the war powers resolution does, perhaps, give a certain kind of legitimacy to this approach that it would not have in the absence of the War Powers Resolution.

I agree in the Vietnam situation there were a lot of abuses, but the War Powers Resolution was not in effect in those days, and now it is. I really do believe in the future the congressional action under the terms of the war powers resolution is likely to be a de facto substitute for a declaration of war.

Mr. BINGHAM. Mr. Cavanaugh.

Mr. CAVANAUGH. Thank you, Mr. Chairman.

I would like to join the chairman in his commendation of the administration, Mr. Bergsten. As a member of the subcommittee, I have been extremely pleased with the responsiveness and cooperation of the administration in bringing this legislation to fruition.

GRANDFATHERING EXISTING EMBARGOES

I would like to ask a couple of questions in regard to section 101, and the grandfathering compromise that has been arranged here. First of all, Mr. Bergsten, would it be your understanding that section 101 would strictly limit and restrict the grandfathering of powers currently being exercised under 5(b) to those specific uses of the authorities granted in 5(b) being employed as of June 1, 1977.

Mr. BERGSTEN. Yes, sir.

Mr. CAVANAUGH. And it would preclude the expansion by the President of the authorities that might be included in 5(b) but are not being employed as of June 1, 1977.

Mr. BERGSTEN. That is right.

Mr. CAVANAUGH. In addition to that, it would require at the end of the 2-year period from the enactment of the National Emergencies Act that any continuation of current exercises of authority under 5(b)

be extended only upon a determination that the national interest would require such an extended exercise of these powers.

Mr. BERGSTEN. That is right.

Mr. CAVANAUGH. That determination would have to be based upon some factual finding by the President.

Mr. BERGSTEN. Certainly so.

Mr. CAVANAUGH. I have no further questions.

Mr. BINGHAM. Thank you, Mr. Cavanaugh.

I would like to say for the record the ranking minority member of the subcommittee and Mr. Cavanaugh have been particularly helpful in the drafting of this legislation and particularly diligent in attending all of our sessions on the subject.

EXTENSION OF WARTIME POWERS TO HOSTILITIES

I think that we can defer further discussion of the amendment Mr. Solarz has been talking about until we go to markup, which will be tomorrow morning at 10:30.

We do have a vote on the floor. Let me just say to you Mr. Bergsten, my initial reaction, and I hope you will take this into account as you give further thought to that proposed amendment, is that it is unnecessary, for a reason that was suggested by Mr. Solarz himself. If the Congress is going to adopt a statute, in effect approving the hostilities, it is no strain for the Congress to include in that statute such powers, perhaps special powers, as might be considered necessary at the time.

My feeling is that we cannot very well anticipate that situation or just how it might arise, and at the present time my preference is to keep the distinction clear between declared war and other emergencies and not extend the powers under the Trading with the Enemy Act to the situation of an undeclared war even though it would be after the point at which the Congress had acted.

I certainly want to look at whatever language Mr. Solarz has to suggest. I thought I would mention that for your benefit.

Again, I want to thank you for your cooperation and your testimony here today.

The committee will meet tomorrow morning at 10:30 for the markup on this legislation, and it is important that there be a quorum present at that time.

The committee stands adjourned.

[Whereupon, at 12 noon, the committee adjourned, to reconvene at 10:30 a.m., Friday, June 17, 1977.]

REVISION OF TRADING WITH THE ENEMY ACT

FRIDAY, JUNE 17, 1977

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The committee met in open markup session at 10:30 a.m. in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki (chairman of the committee) presiding.

Chairman ZABLOCKI. The committee will please come to order.

The first order of business before the committee is the markup of H.R. 7738, revision with the Trading With the Enemy Act.

Yesterday the committee heard executive branch testimony on the bill from the Honorable C. Fred Bergsten, Assistant Secretary of the Treasury. If there are no further questions or comments from members, we will proceed with the reading of the bill.

[No response.]

Chairman ZABLOCKI. The Chair does not see any hands or hear any questions.

The chief of staff will read the bill.

Mr. BRADY [reading]:

H.R. 7738. A bill, with respect to the powers of the President in time of war or national emergency. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Title I, amendments to the Trading With the Enemy Act. Removal of national emergency powers under the Trading With the Enemy Act. Section 101(a), section 5(b)(1) of the Trading With the Enemy Act is amended by striking—

Mr. BINGHAM. Mr. Chairman.

Chairman ZABLOCKI. The gentlemen from New York.

Mr. BINGHAM. I ask unanimous consent that title I be considered as read.

Chairman ZABLOCKI. Is there objection?

[No response.]

Chairman ZABLOCKI. The Chair hears none.

So ordered.

Are there any amendments to title I?

[No response.]

SALARY AMENDMENT

Chairman ZABLOCKI. Page 1, line 8, Mr. Solarz.

Mr. SOLARZ. I am sorry.

Chairman ZABLOCKI. I have a copy of an amendment that has "Mr. Solarz" on the top.

Mr. SOLARZ. I do have an amendment. I thought it was on title II, Mr. Chairman. I am sorry.

Chairman ZABLOCKI. The chief of staff will read the amendment.

Mr. BRADY. Amendment offered by Mr. Solarz, page 1, line 8, strike out "or during any"; and in line 10, immediately before the period insert "and inserting in lieu thereof 'period in which there is in effect a specific statutory—"

Mr. SOLARZ. I ask unanimous consent the amendment be considered as read.

Chairman Zablocki. Is there objection?

[No response.]

Chairman ZABLOCKI. The Chair hears none. So ordered.

The gentleman from New York is recognized to explain his amendment.

Mr. SOLARZ. Thank you, Mr. Chairman.

I have asked that my chart be distributed, a chart which I think will explain precisely what the amendment does. But I would like an opportunity to say a few words about it.

First let me indicate, I think this is very significant legislation. I think the chairman of the subcommittee and members of the subcommittee have done a real service to the Congress and the country by cleaning up the emergency powers of the President by making a very significant distinction between the emergency powers that the President is entitled to when we are in a state of war, on the one hand, and the emergency powers which the President is entitled to when we are in a national emergency other than a state of war.

And it is based, I think, on the principle that the kind of sweeping powers which the President has had in the past under this emergency authority should be much more carefully controlled by the Congress, and that in the absence of a state of war, the emergency authorities of the President should be somewhat more restricted than they are if we are in a state of war.

POWERS AVAILABLE IN HOSTILITIES SHORT OF A DECLARED WAR

My amendment is based on the proposition that as a result of the adoption of the War Powers Resolution, which the distinguished chairman of this committee was the father of, we now are in a situation where in effect if the United States is ever involved in a war in the future, it is likely to be involved in that war pursuant to the adoption of a concurrent resolution under the War Powers Resolution specifically authorizing the President to continue using American troops in a combat situation than we are to adopt a formal declaration of war.

I strongly suspect that a formal declaration of war, as a result of the adoption of the War Powers Resolution, has been relegated to the museum of American history as a kind of political and constitutional antique.

And to the extent that this bill conveys certain emergency powers on the President, which can only be utilized pursuant to a declaration of war, I think that is based on an assumption which is essentially untenable, which is that if we are involved in hostilities in the future, it will be pursuant to a declaration of war itself.

I think it is incumbent on the committee to recognize that if we are involved in significant hostilities in the future, it is much more likely to be the result of a statutory enactment pursuant to the War Powers Resolution, which as the members of the committee may recall, requires the Congress, if the President introduces American troops into a combat situation or into a situation where combat hostilities

are imminent, to adopt a specific concurrent resolution within 60 days or if it has failed to act within 60 days and the President asks for an additional 30 days, within 90 days, specifically authorizing the President to continue using troops in that situation.

In the absence of affirmative congressional action, the troops necessarily have to be withdrawn.

So as a consequence, my amendment would give the President the same emergency authority which he already has in the bill only if there is a declaration of war on the grounds that there are not going to be any more declaration of wars, but there may be concurrent resolutions under the War Powers Resolution.

And to the extent that this legislation recognizes that the President should have certain emergency authorities in the event there is a declaration of war, I would submit that reality and logic requires us to give the President precisely those powers and authorities if there is a concurrent resolution specifically and affirmatively authorizing the use of American troops of combat pursuant to the War Powers Resolution.

If anybody is interested in finding what precise powers my amendment would give the President, assuming the Congress affirmatively acted under the War Powers Resolution, which the President would not have in the absence of a declaration of war, that is contained in this chart.

The President, for example, would have the right to vest title to foreign property, which means to seize it. And I would submit that if American troops are going to be engaged in combat in a foreign country, presumably destroying the property of that country in the course of combat, we certainly ought to give the President the right to seize the property of that country here in our own Nation.

It would also give the President the right to regulate gold and bullion and it would give the President the right to control banking transactions involving domestic interests.

The reason for the latter power, I think, is that it is conceivable that as a result of a wartime situation, there could be a measure of economic instability in the country, a potential run on the banks at some point in the future and certainly in a wartime situation, I think we want to give the President the authority to control such transactions.

In addition, the President would also have the authority to seize foreign property records.

Let me just say in conclusion, Mr. Chairman, that if we recognize the principle that in a wartime situation the President should have these authorities pursuant to a declaration of war, then I think he ought to have the authority pursuant to a concurrent resolution under the War Powers Resolution.

It has been suggested that if such a resolution were adopted, there is no reason the Congress could not incorporate in it language giving the President the authority to do the things which this amendment would give the President the power to do right now. And I suppose that is true. But the answer to it, I think, is the Congress might not at that time be willing to do it. It might not necessarily foresee the necessity for doing it.

By the same token, it could also adopt language in a declaration of war itself of giving the President the power to do these things.

So you could argue that there is no reason to automatically give the President the authority to do these things pursuant to a declaration of war because this could be incorporated in the declaration of war as well.

Lastly, Mr. Chairman, let me just say I think all of us can envision a wide variety of circumstances under which the Congress would approve the use of American troops in a combat situation through a concurrent resolution pursuant to the War Powers Resolution where it might not want to issue a formal declaration of war because of the symbolic and political significance of such an act.

Consequently, I think the new realities which confront us as a result of the adoption of the War Powers Resolution really suggests the need for this kind of amendment.

Chairman ZABLOCKI. The time of the gentleman has expired.

OPPOSITION TO EXTENDING POWERS AVAILABLE IN WARTIME TO OTHER EMERGENCIES

The gentleman from New York, Mr. Bingham.

We will try to follow the 5-minute rule.

MR. BINGHAM. Mr. Chairman, I have to oppose the amendment for several reasons. The subcommittee which had four or five meetings on this bill carefully considered the idea of making a special case of hostilities under the War Powers Resolution and concluded that it was far preferable to make the clean-cut distinction between the case of declared war under the Trading With the Enemy Act, and to provide for all other cases under the emergency provisions of title II of H.R. 7738.

Any other solution becomes confusing, and the gentleman's amendment would be confusing in that respect.

Let me point out that the authority would not come into effect by concurrent resolution. It must be authority by statute enacted within the terms of the War Powers Resolution. But that can be done when there are no hostilities. That can be done when hostilities are imminent. Yet under the gentleman's proposal those powers would immediately come into effect.

I think aside from the fact that it is confusing and that it makes what is a simple break between these two situations fuzzy, it is also unnecessary because it would apply only when there is statutory authority to carry on hostilities. In the same statute, it would be absolutely appropriate and possible for the Congress to confer on the President whatever additional authorities he might need of the kind that are represented in the Trading With the Enemy Act.

To suggest that we now should try to make up the mind of the Congress because Congress might not then want to grant an authority additional to what we have in title II seems to me rather upside down. We cannot predict what the situation would be at that time. It would be much better to leave that matter, if it is necessary to add to the powers of title II, to the Congress at that time since it would be passing a law in any case to do whatever is necessary then.

I would urge the committee to stick with the subcommittee. There was no dissent in the subcommittee on this point when we decided to make it a clean-cut distinction between declaring war and all other situations and to reject the amendment.

Mr. WHALEN. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from Ohio, Mr. Whalen.

Mr. WHALEN. Mr. Chairman, I, too, oppose the Solarz amendment. I do so for much the same reasons as explained by Mr. Bingham.

First, one of the problems with the Trading With the Enemy Act, and particularly section 5(b), is its complexity. As Mr. Bingham has pointed out, what we have attempted to do in the subcommittee is to simplify this, and I am very much afraid if the Solarz amendment is adopted we get right back into the same situation in which we found ourselves since this act was first passed at the time of World War I.

Second, it seems to me the gentleman from New York, by this amendment, is really attempting to amend not section 5(b), but the war powers resolution itself. And I think, therefore, if that is the intent the amendment should be directed to the war powers resolution, not this particular bill.

Third, as Mr. Bingham has pointed out, in the event the war powers resolution is ever implemented then the President, it seems to me, if he needs certain additional powers, can come to the Congress. I am sure if his request is warranted, the Congress will extend these powers that he requested for a temporary period of time. I think, therefore, Mr. Chairman, we should reject the Solarz amendment.

POWERS AVAILABLE ONLY IN TIME OF DECLARED WAR

Chairman ZABLOCKI. I would like to ask the author of the amendment just a very brief question because I understand the executive branch supports his amendment. If you are following your chart, it is much simpler to understand than the language of your amendment.

Under the bill, H.R. 7738, the President could not, short of a declared war, vest title to foreign property, regulate gold and bullion, or control banking transactions involving domestic interests. Under your proposed amendment, the President could. Am I understanding and perceiving it correctly?

Mr. SOLARZ. The Chairman is right, but the President may only exercise that authority pursuant to the enactment of the statute by the Congress under the War Powers Resolution specifically authorizing the President to continue the use of troops in a combat situation or to continue the presence of troops in a situation in which hostilities may be imminent.

Chairman ZABLOCKI. The gentleman knows the War Powers Resolution does not deal with the Presidential powers under the Trading With the Enemy Act.

Mr. SOLARZ. The point is, this is not an amendment to the War Powers Resolution. It is an amendment to the Trading With the Enemy Act. And in order for the President to exercise these emergency powers under my amendment, there would have to be an affirmative action by the Congress to adopt a statute specifically authorizing the President to utilize troops either in a combat situation or in a situation in which hostilities were imminent.

And the theory behind it is, if, in fact, the Congress had adopted such a statute and if, in fact, our troops are in combat or may be in combat imminently, then the President ought to have that authority, which is precisely why I think the administration indicated—

Chairman ZABLOCKI. The chairman would submit that the gentleman from New York, Mr. Bingham, made a very valid point. I think it would inhibit the Congress from taking proper action.

Mr. Cavanaugh.

Mr. CAVANAUGH. Briefly, Mr. Chairman, I would like to associate myself with the remarks of Subcommittee Chairman Bingham and Mr. Whalen to express my view that the adoption of the Solarz amendment does great violence to the subcommittee's efforts. It is not an issue that was not well considered by the subcommittee. In very simple terms, I think it would return us to the situation we have now of no clear distinction being made between very grave situations in which you need to avail the President of almost unlimited powers and restrictions upon his powers when the country is not faced with those very severe threats to its existence.

And so I really think the adoption of the Solarz amendment would invalidate any need for the legislation to go forward and would pretty much leave us in the confused state that the law has been for 30 years.

Chairman ZABLOCKI. Would the gentleman yield to the gentleman from New York, Mr. Solarz?

Mr. CAVANAUGH. I do, yes.

Mr. SOLARZ. I would like, if I may, Mr. Chairman, briefly in closing to make two points.

NEED FOR EXTENDING THE WARTIME POWERS

I really think the implications of this amendment have been misunderstood. It is, I think, unfair to say that the adoption of this amendment would leave us where we are now because it would not leave us where we are now. Where we are now is that the President can utilize all of these powers, these emergency powers without any affirmative congressional triggering his right to use them.

Under my amendment, the President would not be able to utilize these powers unless there was affirmative congressional action pursuant to the War Powers Resolution.

One may agree or disagree with that. One might contend that these powers are of such a nature that there ought to be a formal declaration of war before they can be used, but it is unfair to say that the adoption of the amendment leaves us where we are now, because right now the President can utilize these powers not only in the absence of a declaration of war, but in the absence of any affirmative congressional action whatsoever.

The final point I want to make is that it seems to me the arguments which have been used by the gentleman from New York and the gentleman from Ohio against this amendment would be equally applicable to the bill itself. You could argue that the President should not have any of these emergency authorities.

If there is a declaration of war, there is ample opportunity for the Congress to decide at that point whether it wants to give the President these emergency authorities. I think the answer to that is that we recognize that if we are involved in a combat situation, the President ought to have this inherent authority.

My only point embodied in this amendment is that in the future there are not going to be any declaration of wars and if you think in

principle the President ought to have this authority when we are in a war, which I think you do because that is why it is in the bill, then he ought to have the authority if we act under the war powers resolution, which is the only way we are going to be involved in wars in the future.

Mr. BINGHAM. Vote.

Chairman ZABLOCKI. The gentleman from Illinois would like to speak very briefly.

There is a vote on the floor on instructing the conferees.

Mr. Derwinski.

Mr. DERWINSKI. I support the Solarz amendment, Mr. Chairman. In fact, the best argument I heard for the Solarz amendment was not from the gentleman himself but from the gentleman from Ohio, Mr. Whalen, who made the point that this is a very complex subject and the purpose of the bill is to bring simplicity to it.

Now, if that is the case, we should take the foreign aid law and reduce it to half a page. In other words, if the issue here is to take a complex subject and to concentrate on simplicity and, therefore, that justifies all the considerations, why, we could rewrite all law and use that approach.

Mr. Solarz's amendment, I think, is necessary for the very fact that in this tremendously complex and historic subject, you have to have the kind of provisions that he wants to retain. And I would hope that we would look upon his amendment as an asset to the administration, not an added burden. And I would certainly hope we would give the gentleman the support he deserves with this amendment.

Chairman ZABLOCKI. The question occurs on the amendment of the gentleman from New York.

All those in favor signify by saying "aye."

[Chorus of ayes.]

Chairman ZABLOCKI. Opposed, "no."

[Chorus of noes.]

Chairman ZABLOCKI. The noes appear to have it.

Mr. SOLARZ. I ask for division.

Chairman ZABLOCKI. Division is requested.

All those in favor signify by raising their right hand.

[Showing of hands.]

Chairman ZABLOCKI. The noes will raise their hands.

[Showing of hands.]

Chairman ZABLOCKI. The chief of staff will report the vote.

Mr. BRADY. On this vote there were 5 ayes and 9 nays.

Chairman ZABLOCKI. The amendment fails.

The Chair would like to advise we have two minor amendments left. If the members would come back immediately after voting and ask other members to join them in returning, we can dispose of this legislation.

The committee is in recess until 11:15.

Mr. FASCELL. Mr. Chairman, let me just say I think the next bill we ought to take up at the next meeting or sometime next week when we can notice it. There is no way we can reach it today. It would take unanimous consent anyway, and I would like to have it go over.

[Whereupon, a short recess was taken.]

Chairman ZABLOCKI. The committee will resume the consideration of H.R. 7738.

Did the gentleman from Illinois want to be heard first?

Mr. WHALEN. Mr. Chairman, I have an amendment to title II. I do not think we have come to that yet.

Chairman ZABLOCKI. We have not read title II.

The gentleman from New York has an amendment to title I.

EFFECTIVE DATA OF GRANDFATHERING PROVISION

Mr. BINGHAM. I have a simple amendment to title I. I did not have it duplicated.

On page 2, line 4, I would ask unanimous consent that June 1, 1977, be changed to July 1, 1977.

Chairman ZABLOCKI. Is there objection?

The Chair hears none.

So ordered. The amendment is agreed to.

Are there further amendments to title I?

If not, the chief of staff will read.

Mr. BRADY [reading]:

Title II—International Emergency Economic Powers. Short Title.

Section 201. This title may be cited as the "International Emergency Economic Powers Act."

Situations in which authorities may be exercised.

Section 202. (a) Any authority granted to the President by section 203 may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

Chairman ZABLOCKI. The gentleman from Ohio.

Mr. WHALEN. Is it open at this point?

Chairman ZABLOCKI. Make a motion.

Mr. WHALEN. Mr. Chairman, I make a motion that title II be considered as read and open for amendment.

Chairman ZABLOCKI. The unanimous consent of the gentleman from Ohio is that we consider title II as read and open for amendment at any point.

Is there objection?

The Chair hears none.

So ordered.

The gentleman from Ohio.

Mr. WHALEN. I have an amendment.

Chairman ZABLOCKI. The chief of staff will read the amendment.

PROTECTION OF THE MEDIA

Mr. BRADY. Amendment offered by Mr. Whalen, page 6, strike out lines 7 and 8 and in line 9 strike out "3" and in lieu thereof insert "2".

Chairman ZABLOCKI. The gentleman from Ohio is recognized in support of his amendment.

Mr. WHALEN. Mr. Chairman, what this refers to, we delete one of the authorities not granted to the President under title II. This may sound at the outset like an anti-media amendment. I can assure you it is not. I have worked very closely with the media in connection with the issue of the so-called reporter's privilege and the media are very much concerned about any statutory reference to their rights.

It is their opinion they are protected by the Constitution, specifically the first amendment, and resist any effort to protect themselves by legislative statute.

Second, I offer this amendment because, while the legislative intent of this provision, as it is now in the bill, is clear at this moment, particularly in view of the history which has precipitated it, we cannot be so certain as to how it will be interpreted in the future. Specifically some court some day will decide because certain freedoms of the media are protected from Presidential regulation that others may be subject to it.

My staff and I have checked with a number of representatives of the media throughout the country, and all are in accord this amendment is not needed, in their opinion, for their protection.

Chairman ZABLOCKI. The gentleman from New York.

Mr. BINGHAM. Do I understand correctly eliminating the two lines in effect does not change the sense of the—

Mr. WHALEN. That is correct. I would make a further observation, Mr. Bingham. I do believe we should make this clear in the report language. I am just simply suggesting the media representatives that I recently talked to, plus my previous experience with them, would indicate that they would rather not have this statutory protection.

Mr. BINGHAM. If the gentleman would yield further, on the basis of that, I have no objection to the amendment.

Chairman ZABLOCKI. The question occurs on the amendment offered by the gentleman of Ohio.

All those in favor signify by saying "aye."

[Chorus of ayes.]

Chairman ZABLOCKI. Opposed, "no."

[Chorus of noes.]

Chairman ZABLOCKI. The ayes have it; and the amendment is agreed to.

Are there other amendments to title II?

[No response.]

TITLE III

Chairman ZABLOCKI. If there are no further amendments to title II, the chief of staff will read.

Mr. BRADY [reading]:

Title III, amendments to the Export Administration Act of 1969.
Authority to regulate extraterritorial exports.

Mr. BINGHAM. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from New York.

Mr. BINGHAM. I ask unanimous consent title III be considered as read and open for amendment.

Chairman ZABLOCKI. Is there objection?

[No response.]

Chairman ZABLOCKI. The Chair hears none.

Title III is open for amendment.

Are there any amendments to title III?

[No response.]

Chairman ZABLOCKI. The gentleman from Illinois, I understand you want to be recognized.

AVAILABILITY OF INFORMATION ON H.R. 7738

Mr. DERWINSKI. Mr. Chairman, if I could have the attention of the gentleman from New York and Ohio, I appreciate their interest in this product of their hard work, but, frankly, there are many of us, at least speaking for a number of members of the minority, who do not feel they were adequately informed as to what is in this bill. This is a very complex subject, and we feel it is incumbent on us to be better equipped to discuss and debate this particular bill before it moves any further along the way.

So, I would ask if we could defer consideration of this measure until sometime next week, and at that point we may either be supporting it or having helpful amendments, such as the one Mr. Solarz tried to pass. But we are, frankly, in the dark as to the real implications of this bill.

Mr. BINGHAM. Would the gentleman yield?

Mr. DERWINSKI. Yes.

Mr. BINGHAM. We devoted a whole section to this matter yesterday. The bill was carefully explained. The administration indicated they had no objection to it except as to matters we know they object to, like use of the concurrent resolution veto. I do not really understand the gentleman's position. We had extensive hearings and discussions in the subcommittee. There was no dissent on the bill in the subcommittee.

Mr. DERWINSKI. I do not want to turn this into a critique on the subcommittee system and the functions of this committee. When under the subcommittee procedure, unfortunately, unless someone has a lot of time on his hands, no one is there except the majority of the subcommittee holding the fort. So as a result of this you have a minimum number of members working at the subcommittee level. When you come up with a subject that is this historic a controversy, you just do not brush it aside with a simple explanation that the administration is for it with a few reservations; as it has been explained.

Frankly, a number of us are concerned with the long-term implications of what you are trying to do. We are not satisfied. We have not been briefed properly. Mr. Whalen has not communicated in enough detail with the rest of us on this side. He is our ranking member. We just feel we need better information and, therefore, would suggest that we defer the matter until next week. If not, I will object to the lack of quorum at the time you are ready for final passage.

Mr. BINGHAM. Would the gentleman be willing to set a date for the final consideration of the bill on Monday afternoon?

Chairman ZABLOCKI. If the gentleman from New York is posing the question to the Chair, since the gentleman from Illinois would not be in a position to give him the answer, the earliest hour we could consider the bill for final approval would be 1:30 p.m. Monday.

Mr. BINGHAM. My question was whether the gentleman from Illinois would be—

Chairman ZABLOCKI. Would there be sufficient time over the weekend for the gentleman to study the bill and be fully informed?

Mr. DERWINSKI. There are a number of members involved in this question of mine and we will do the best we can to cooperate. We do not want to be obstructionists here. We want to cooperate to the

extent we can. We just honestly at this point are not satisfied with what we grasp in this bill. But Monday at 1:30, subject only to whatever complications you have on the floor, that will give us time to finish some of the research we are working on now.

Mr. BINGHAM. If the gentleman would yield for a moment further, may I just say in this case on the day we reported out this measure from the subcommittee, we had six or seven members there, including both members of the minority.

Chairman ZABLOCKI. I understand—would the gentleman from Illinois yield?

Mr. DERWINSKI. Yes.

Chairman ZABLOCKI. As I understand, the bill was reported out unanimously.

Mr. BINGHAM. It was.

Chairman ZABLOCKI. The gentleman from Ohio.

Mr. GUYER. I think in deference to the remarks of Mr. Derwinski, it is far more wholesome if all the committee has a better knowledge. It will facilitate passage on the floor and look better for the committee, even though you might mechanically put it through. I think it would be a more wholesome approach, and we would all be more conversant with the contents.

Chairman ZABLOCKI. It would be sufficient time for those who have questions to clarify them?

Mr. GUYER. Yes.

Chairman ZABLOCKI. The gentleman from Ohio, Mr. Whalen.

Mr. WHALEN. May I also state the minority counsel has submitted to each member of the minority a summary of this, which I think was received yesterday or the day before. I hope this draft would be studied between now and next Monday. Any questions, too, that I or my staff consultant, Mr. Popovich, can answer, we will be glad to do so.

Chairman ZABLOCKI. The Chair would like to further state that the subcommittee staff prepared a section-by-section summary dated June 13. I would hope those members who have any questions about the legislation would carefully study the summary prepared and the section-by-section analysis.

Mr. IRELAND. Mr. Chairman.

Chairman ZABLOCKI. Yes.

Mr. IRELAND. Not to prolong what seems to have been concluded, I would like to take this opportunity to go on record and compliment the gentleman from New York, Mr. Bingham, for the way the subcommittee handled this. The attendance, not only at the last markup meeting of the subcommittee but throughout, was excellent. The information was quite detailed and substantial. I think he deserves a considerable amount of credit.

Chairman ZABLOCKI. In view of the situation, the Chair will agree that we postpone final action until Monday when the committee will meet at 1:30.

Does the Chair understand the gentleman from Illinois is asking unanimous consent that amendments would also be in order?

Mr. DERWINSKI. No. What the heck, if we have amendments, we will process them on the floor.

Chairman ZABLOCKI. I would hope that if you have amendments that are serious amendments, any amendments coming from the gentleman from Illinois, that he would ask unanimous consent they

be considered in committee. We prefer to have amendments be considered in committee rather than be bombarded on the floor.

Mr. DERWINSKI. It would not be bombarded on the floor. I don't think this would be the kind of bill that would be treated in that fashion. I honestly don't know if by Monday we will have all our ducks in a row.

Chairman ZABLOCKI. The only reason the Chair has made that observation is, as you know, it is our policy, certainly mine, that to the extent possible, we go with a united front with legislation from this committee to the floor.

Mr. DERWINSKI. If the united front is possible, fine. If it is not, it is not do to a lack of good will on all sides.

Chairman ZABLOCKI. Thank you very much.

The committee stands adjourned until 1:30 Monday.

[Whereupon, at 11:30 a.m., the committee adjourned, to reconvene at 1:30 p.m., Monday, June 20, 1977.]

REVISION OF TRADING WITH THE ENEMY ACT

MONDAY, JUNE 20, 1977

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The committee met in open markup session at 1:55 p.m., in room 2172, Rayburn House Office Building, Hon. Clement J. Zablocki (chairman of the committee) presiding.

Chairman ZABLOCKI. The committee will please come to order.
We are meeting today for the consideration of the bill, H.R. 7738, to revise the Trading With the Enemy Act.

MAKING THE EXPORT ADMINISTRATION ACT PERMANENT

The Chair has received two letters, one from the Honorable C. Fred Bergsten, Assistant Secretary, Department of the Treasury, and an almost identical letter from Mr. Haslam, the General Counsel of the U.S. Department of Commerce. We desire to have them placed in the record. Perhaps we ought to have the chief of staff read the brief letter. They are identical. Just read the one from Assistant Secretary Bergsten for the record. There may be some members who have comments. The chief of staff will read.

Mr. BRADY [reading]:

Department of Treasury, Washington D.C., 20220. Assistant Secretary, June 20, 1977.

Dear Mr. Chairman: At the June 16 hearings on H.R. 7738, a bill "With respect to the powers of the President in time of war or national emergency," I stated the administration's position on the proposed legislation.

There is, however, one further point which was not made. It is critically important that the Government's export control program continue without interruption or lapse. Accordingly, the administration again wishes strongly to urge that this legislative proposal include a provision amending the Export Administration Act to make it permanent legislation, as the administration supported draft recommends.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the administration's program. Sincerely yours, Fred Bergsten.

Chairman ZABLOCKI. Without objection the other letter signed by the General Counsel also will be made part of the record, although they are identical.

[The letter of June 20, 1977 from C. E. Haslam follows:]

GENERAL COUNSEL OF THE U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., June 20, 1977.

HON. CLEMENT ZABLOCKI,
Chairman, Committee on International Relations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At the June 16 hearings on H.R. 7738, a bill "With respect to the powers of the President in time of war or national emergency," Assistant Secretary of the Treasury Bergsten stated the Administration's position on the proposed legislation.

There is, however, one further point which was not made. It is critically important that the Government's export control program continue without interruption or lapse. Accordingly, the Administration again wishes strongly to urge that this legislative proposal include a provision amending the Export Administration Act to make it permanent legislation, as the Administration supported draft recommends.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

C. E. HASLAM, *General Counsel.*

Chairman ZABLOCKI. Does the gentleman from New York, Mr. Bingham, wish to comment?

Mr. BINGHAM. Yes, Mr. Chairman, This question of permanent authority for the Export Administration Act was discussed when the major bill was before us, and the committee decided at that time to provide a 2-year authorization for the Export Administration Act. This gives us an opportunity to review what is being done. There really, as I see it, is no more reason why we should provide a permanent authorization for this type of law than for other bills that come up for annual or biennial authorization. If there is a 2-year period, there will be pressure of time on both the Congress and the administration to act in a timely fashion.

If, for some reason, we should come up against the deadline without having agreed on an extension, there would also be the possibility of extending for 1 month or 2 months without change, the kind of thing that is done with appropriations, when appropriations run out. So this is not a matter we have not given consideration to; we have. We feel this is an important law and one which the Congress should review periodically, and it seems to us appropriate that at the end of the period of time for which Congress has authorized it, that it expire. That was the way it was done in the principal bill. I do not see any reason to amend that in the bill now before us.

Chairman ZABLOCKI. The gentleman from Illinois, Mr. Derwinski.

Mr. DERWINSKI. I have a question, Mr. Chairman. By the way, is there someone representing the Justice Department?

Chairman ZABLOCKI. Would you please come to the table and identify yourself by name and office?

STATEMENT OF BRUNO A. RISTAU, CHIEF OF THE FOREIGN LITIGATION UNIT, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. RISTAU. Bruno Ristau, the Chief of Foreign Litigation in the Civil Division.

NUMBER OF EXECUTIVE ORDERS BASED ON TRADING WITH THE ENEMY ACT

Mr. DERWINSKI. If I may direct your attention to this bill before us, sir. In view of the deletion in section 101(a), page 1, lines 8, 9, and 10, striking "or during any other period of national emergency declared by the President" from existing law, I am wondering if the Justice Department has been asked for an opinion on a number of Executive orders or other Presidential determinations that have been based on the present Trading With the Enemy Act.

Mr. RISTAU. We have, Mr. Derwinski, of course, participated with the subcommittee in the drafting of this legislation. There has been consultation with the various agencies within the executive department. The specific question that you, sir, have raised, to my knowledge, was not asked, although the various Executive orders that have been issued by the President from time to time are eventually reprinted in the bound volume that I believe all committee members have.

Mr. DERWINSKI. In other words, we do not have an up-to-date tabulation of the number of orders?

Mr. RISTAU. Not to my knowledge, sir.

Mr. DERWINSKI. Nor does State have it.

**STATEMENT OF LEONARD E. SANTOS, ATTORNEY ADVISER, OFFICE
OF THE GENERAL COUNSEL, DEPARTMENT OF THE TREASURY**

Mr. SANTOS. No.

POWERS AVAILABLE SHORT OF DECLARED WAR

Mr. DERWINSKI. One other followup question, Mr. Chairman. Would this deletion affect the President's ability to base Executive orders in the future on the Trading With the Enemy Act notwithstanding the grandfather clause in the bill?

Mr. RISTAU. With the deletion in section 101, Mr. Derwinski, if you are referring to the Trading With the Enemy Act now, as it will read after this legislation is enacted, he will be able to promulgate Executive orders under the Trading With the Enemy Act only in time of proclaimed war, not in time of a national emergency. That provision is being removed from the Trading With the Enemy Act. So that the Trading With the Enemy Act after it is amended will be strictly a wartime measure.

Mr. BINGHAM. Would the gentleman yield?

Mr. WHALEN. Will the gentleman yield?

Mr. DERWINSKI. Let me ask one other question. This is the point I was trying to get to. We live in a day and age where formal declarations of war have become obsolete. In fact, since 1945, the end of World War II—any war, not just the wars we have been involved with, war between many other nations, have tended not to be preceded by an official declaration and that is the point I am getting to.

What is the effect of this deletion of the President's ability to base Executive orders? As I understand your answer, sir, unless there was a formal declaration of war that should this legislation pass as presented to us, the President would not be able to issue any Executive orders under the Trading With the Enemy Act if a declaration of war were not made.

Mr. RISTAU. That is correct.

Mr. WHALEN. Would the gentleman yield?

Mr. DERWINSKI. Yes.

Mr. WHALEN. That is what title II has done, to give the President that authority to issue certain Executive orders in the event that an emergency is declared. Of course, the emergency process comes not under this bill but under the National Emergency Act, which was passed by the previous Congress.

Mr. BINGHAM. Would the gentleman yield to me?

Mr. DERWINSKI. Yes, of course.

Mr. BINGHAM. I would just like to point out there are certain limited powers that can be exercised under the Trading With the Enemy Act which the President would not be authorized to exercise under the International Emergency and Economic Powers Act. They include the power to seize property. The power to freeze assets he would have. The power to seize records is another one which would not be included, although the power to require and secure access to records he would have.

The other power has to do with the actions with respect to bullion and so on. With respect to domestically held assets, we did have the testimony from Mr. Bergsten that the Treasury Department and the administration said that there are powers in other provisions of law sufficient to give the executive the power to move in the area of domestically held assets.

Mr. DERWINSKI. I have no other questions, Mr. Chairman. I yield back my time.

Chairman ZABLOCKI. Are there any other questions?

[No response.]

Chairman ZABLOCKI. The Chair will entertain a motion.

Mr. BINGHAM. Mr. Chairman, I move that H.R. 7738, as amended, be reported favorably to the House.

Chairman ZABLOCKI. And that the Chair take all necessary action for expeditious consideration?

Mr. BINGHAM. Yes.

Chairman ZABLOCKI. All those in favor signify by saying "aye."

[Chorus of ayes.]

Chairman ZABLOCKI. Opposed, "no."

[No response.]

Chairman ZABLOCKI. The ayes have it and H.R. 7738 is reported out unanimously.

If there is no further business before the committee, the Chair will adjourn the meeting until further notice.

[Whereupon, at 2:10 p.m., the committee adjourned, subject to call of the Chair.]